

BEFORE THE NEBRASKA TAX EQUALIZATION AND REVIEW COMMISSION

Betty J. Peterson,
Appellant,

v.

Greeley County Board of Equalization,
Appellee.

Case No: 16A 0126

Decision and Order Affirming Greeley
County Board of Equalization

Background

1. The Subject Property is an unimproved agricultural parcel, with a legal description of: Pt SE ¼ West of Old RR 24-18-11 61.9 acres in Greeley County, Nebraska.
2. The Greeley County Assessor (the County Assessor) assessed the Subject Property at \$335,465 for tax year 2016.
3. The Taxpayer protested this value to the Greeley County Board of Equalization (the County Board) and requested an assessed value of \$280,941 for tax year 2016.
4. The County Board determined that the taxable value of the Subject Property was \$321,220 for tax year 2016.
5. The Taxpayer appealed the determination of the County Board to the Tax Equalization and Review Commission (the Commission).
6. A Single Commissioner hearing was held on July 6, 2017, at the Ramada Columbus & Rivers Edge Convention Center, 265 33rd Avenue, Columbus, Nebraska, before Commissioner Nancy J Salmon.
7. Robert F. Peterson was present at the hearing on behalf of the Taxpayer.
8. Cindy Bassett, Greeley County Attorney, was present for the County Board.

Applicable Law

9. All real property in Nebraska subject to taxation shall be assessed as of the effective date of January 1.¹
10. The Commission’s review of the determination of the County Board of Equalization is de novo.²
11. When considering an appeal a presumption exists that the “board of equalization has faithfully performed its official duties in making an assessment and has acted upon

¹ See, Neb. Rev. Stat. §77-1301(1) (Reissue 2009).

² See, Neb. Rev. Stat. §77-5016(8) (2016 Cum. Supp.), *Brenner v. Banner Cty. Bd. of Equal.*, 276 Neb. 275, 286, 753 N.W.2d 802, 813 (2008). “When an appeal is conducted as a ‘trial de novo,’ as opposed to a ‘trial de novo on the record,’ it means literally a new hearing and not merely new findings of fact based upon a previous record. A trial de novo is conducted as though the earlier trial had not been held in the first place, and evidence is taken anew as such evidence is available at the time of the trial on appeal.” *Koch v. Cedar Cty. Freeholder Bd.*, 276 Neb. 1009, 1019 (2009).

sufficient competent evidence to justify its action.”³ That presumption “remains until there is competent evidence to the contrary presented, and the presumption disappears when there is competent evidence adduced on appeal to the contrary. From that point forward, the reasonableness of the valuation fixed by the board of equalization becomes one of fact based upon all the evidence presented. The burden of showing such valuation to be unreasonable rests upon the taxpayer on appeal from the action of the board.”⁴

12. The order, decision, determination or action appealed from shall be affirmed unless evidence is adduced establishing that the order, decision, determination, or action was unreasonable or arbitrary.⁵
13. Proof that the order, decision, determination, or action was unreasonable or arbitrary must be made by clear and convincing evidence.⁶
14. A Taxpayer must introduce competent evidence of actual value of the Subject Property in order to successfully claim that the Subject Property is overvalued.⁷
15. The Commission’s Decision and Order shall include findings of fact and conclusions of law.⁸

Findings of Fact & Conclusions of Law

16. The County Assessor utilizes the Market or Sales Approach in valuing agricultural property in Greeley County. The Taxpayer contends that the Subject Property should be valued under the Income Approach under the circumstances. He provided a copy of the current lease regarding the Subject Property.
17. Actual value of real property is defined by Nebraska Statute as:
The market value of real property in the ordinary course of trade. Actual value may be determined using professionally accepted mass appraisal methods, including, but not limited to, the (1) sales comparison approach using the guidelines in section 77-1371, (2) income approach, and (3) cost approach. Actual value is the most probable price expressed in terms of money that a property will bring if exposed for sale in the open market, or in an arm’s-length transaction, between a willing buyer and willing seller, both of whom are knowledgeable concerning all the uses to which the real property is adapted and for which the real property is capable of being used. In analyzing the uses and restrictions applicable to real property, the analysis shall include a consideration of the full description of the physical characteristics of the real property and an identification of the property rights being valued.⁹

³ *Brenner v. Banner Cty. Bd. Of Equal.*, 276 Neb. 275, 283, 753 N.W.2d 802, 811 (2008) (Citations omitted).

⁴ *Id.*

⁵ Neb. Rev. Stat. §77-5016(9) (2016 Cum. Supp.).

⁶ *Omaha Country Club v. Douglas Cty. Bd. of Equal.*, 11 Neb. App. 171, 645 N.W.2d 821 (2002).

⁷ Cf. *Josten-Wilbert Vault Co. v. Board of Equalization for Buffalo County*, 179 Neb. 415, 138 N.W.2d 641 (1965)

(determination of actual value); *Lincoln Tel. and Tel. Co. v. County Bd. Of Equalization of York County*, 209 Neb. 465, 308 N.W.2d 515 (1981)(determination of equalized taxable value).

⁸ Neb. Rev. Stat. §77-5018(1) (2016 Cum. Supp.).

⁹ Neb. Rev. Stat. §77-112 (Reissue 2009).

18. Valuation of agricultural and horticultural land is also addressed in the Nebraska Department of Revenue Regulations. See, Title 350, N.A.C. Chap. 14 §006. The regulations state that both a market (Sales comparison) approach or an income approach may be used to determine actual value of agricultural or horticultural land, but “Reconciliation of final value is based on the appropriateness of the approach to value (market is preferred in the valuation of agricultural land) and the availability and reliability of the information used in each approach.”¹⁰
19. The Commission finds that the sales comparison approach best determines actual value of the Subject Property.
20. The Taxpayer asserts that there were not any comparable sales in the year 2015 to justify an increase in valuation for tax year 2016.
21. The Taxpayer did provide a list of five comparable sales between 2012 and 2015, one of which concerned property in a different market area. The County Assessor explained the methodology utilized by her office in using the sales comparison method. In this case, she utilized all arms-length sales of 1A land in the market area where the Subject Property is located. The Commission finds that the Assessor properly assessed the Subject Property of the sales and market approach.
22. Lastly, the Taxpayer contends that the sales comparison approach utilized by the County Assessor did not differentiate sales for pivot irrigated properties and sales for gravity irrigated properties. The Subject Property is irrigated by gravity. However, no evidence was submitted quantifying the difference between gravity irrigated and pivot irrigated properties.
23. The Agricultural and Horticultural Regulations define irrigated cropland as including “all land where irrigation is used, whether for cultivated row crops, small grains, seeded hay, forage crops, or grasses.”¹¹
24. The Taxpayer has not produced competent evidence that the County Board failed to faithfully perform its duties and to act on sufficient competent evidence to justify its actions.
25. The Taxpayer has not adduced clear and convincing evidence that the determination of the County Board is arbitrary or unreasonable and the decision of the County Board should be affirmed.

ORDER

IT IS ORDERED THAT:

1. The Decision of the County Board of Equalization determining the taxable value of the Subject Property for tax year 2016, is Affirmed.

¹⁰ 350 Neb. Admin. Code, Chap. 14 §006.03.

¹¹ 350 Neb. Admin. Code, Chap. 14, §002.21B.

2. The taxable value of the Subject Property for tax year 2016 is: \$321,220.
3. This Decision and Order, if no further action is taken, shall be certified to the Greeley County Treasurer and the Greeley County Assessor, pursuant to Neb. Rev. Stat. §77-5018 (2016 Cum. Supp.).
4. Any request for relief, by any party, which is not specifically provided for by this Decision and Order is denied.
5. Each Party is to bear its own costs in this proceeding.
6. This Decision and Order shall only be applicable to tax year 2016.
7. This Decision and Order is effective on July 18, 2017.

Signed and Sealed: July 18, 2017

Nancy J Salmon, Commissioner